

OPEN MEETING ITEM

2/17/11

COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Gary Pierce, Chairman
Bob Stump, Commissioner
Sandra D. Kennedy, Commissioner
Paul Newman, Commissioner
Brenda Burns, Commissioner

FROM: Matthew J. Neubert *MJN*
Director of Securities

DATE: January 20, 2011

RE: Proposed Order to Cease and Desist, for Restitution, and for Administrative Penalty regarding Wayne Scott Clague and Order to Dismiss regarding Karen Stensler (f/k/a Karen Clague), Docket No. S-20759A-10-0387

CC: Ernest G. Johnson, Executive Director

Arizona Corporation Commission

DOCKETED

FEB 2 2011

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[Signature]

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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RECEIVED

Please find attached a proposed Order to Cease and Desist, for Restitution, and for Administrative Penalty ("Order") regarding Wayne Scott Clague ("Clague" or "Respondent"), and an Order to Dismiss Karen Stensler (f/k/a Karen Clague). The Order requires the Respondent to cease and desist from violating the Securities Act, pay restitution to investors in the principal amount of \$1,076,000, and pay an administrative penalty in the amount of \$50,000. A copy of the notice was personally served on Respondent on September 29, 2010, and Respondent has failed to request a hearing and answer the allegations in the notice within the prescribed time limits.

From on or about May 14, 2007, to July 1, 2008, Respondent offered or sold securities in the form of investment contracts, within or from Arizona. The monies were to be used by Respondent to complete two different residential developments. The developments would be sold at a profit and all investors would receive a return of principal and a percentage share in the profits.

The Order finds that Respondent violated A.R.S. §§44-1841 and 44-1842 by selling unregistered securities while being unlicensed. In addition, the Order finds that Respondent violated A.R.S. §44-1991 because there were untrue statements or misleading omissions of material fact. The Division believes that the Order is appropriate to protect the public welfare.

Finally, the Order also includes a dismissal of Karen Stensler ("K. Stensler"). Before their marriage, K. Stensler and Clague entered into a pre-nuptial agreement. The pre-nuptial agreement was still in effect during the timeframe of the securities violations. The pre-nuptial agreement identified

certain assets that were to remain the sole and separate property of K. Stensler and Clague, respectively. Through the Division's investigation, it was determined that Clague was a member and manager of Norstreet and his interest and ownership in Norstreet was intended to be his sole and separate property. Likewise, any liability created that related to Norstreet was Clague's sole and separate obligation. In addition, sales commission payments received by Clague were deposited into an account under Clague's sole control. On March 11, 2008, a petition for dissolution of marriage was filed in Arizona (FN2008-050461) and a decree of dissolution of marriage of Clague and K. Stensler was entered on May 6, 2009. Based upon the documentations reviewed by the Division, the dismissal of K. Stensler is appropriate in this particular circumstance.

Originator: Phong (Paul) Huynh

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

In the matter of:)	DOCKET NO. S-20759A-10-0387
)	
NORSTREET PORTFOLIO, LLC, an)	DECISION NO. _____
Arizona limited liability company,)	
)	ORDER TO CEASE AND DESIST, FOR
NATHAN NORDSTROM, a divorced man)	RESTITUTION, AND FOR
and LORRIE BECKHAM (F/K/A LORRIE)	ADMINISTRATIVE PENALTY
NORDSTROM), the former spouse,)	RE: WAYNE SCOTT CLAGUE
)	
WAYNE SCOTT CLAGUE, a divorced)	
man and KAREN STENSLER (F/K/A)	ORDER TO DISMISS
KAREN CLAGUE), the former spouse,)	RE: KAREN STENSLER (f/k/a KAREN
)	CLAGUE)
Respondents.)	

14 On September 23, 2010, the Securities Division ("Division") of the Arizona Corporation
15 Commission ("Commission") filed a Notice of Opportunity for Hearing regarding a Proposed
16 Order to Cease and Desist, For Restitution, For Administrative Penalties, and For Other
17 Affirmative Action ("Notice") against Norstreet Portfolio, LLC, an Arizona limited liability
18 company ("Norstreet"); Nathan Nordstrom ("Nordstrom"), a divorced man; Lorrie Beckham (f/k/a
19 Lorrie Nordstrom) ("L. Beckham"), the former spouse of Nordstrom; Wayne Scott Clague
20 ("Clague"), a divorced man; and Karen Stensler (f/k/a Karen Clague), the former spouse of
21 Clague.

22 A copy of the Notice was personally served on Clague on September 29, 2010. A copy of
23 the Notice was personally served on Karen Stensler ("K. Stensler") on October 25, 2010. Clague
24 has failed to request an administrative hearing within 10 days after receipt of the Notice, pursuant
25 to A.R.S. § 44-1972 and A.A.C. Rule R14-4-306. Clague has also failed to file an Answer within
26 30 days of service of the Notice, pursuant to A.A.C. Rule R14-4-305.

I.

FINDINGS OF FACT

1. Norstreet Portfolio, LLC ("Norstreet") is an Arizona limited liability company organized on May 9, 2007. The management of Norstreet is reserved to the managers.

2. Clague is a manager of Norstreet. Clague, on behalf of Norstreet, conducted business and/or did business as and through Norstreet, as its manager.

3. Clague, Norstreet, and Nordstrom may be referred to collectively as "Respondents."

4. From March 16, 2006, to May 6, 2009, Karen Stensler ("K. Stensler") was the spouse of Respondent Clague. On March 11, 2008, a petition for dissolution of marriage was filed in Arizona (FN2008-050461) and a decree of dissolution of marriage of Clague and K. Stensler was entered on May 6, 2009.

5. K. Stensler may be referred to as "Respondent Spouse." Respondent Spouse was joined in this action under A.R.S. § 44-2031(C) solely for purpose of determining the liability of the marital community.

6. At all times relevant, Respondent Clague was acting for his own benefit.

7. In or around May 2007, Nordstrom and Clague discussed raising capital to fund Norstreet real estate development projects. Clague was tasked with finding investors to provide capital to Norstreet.

8. Nordstrom and Clague agreed that there would be a five percent (5%) commission paid to the party that secured the investment capital. The five percent (5%) would be based on the total amount invested by an investor.

9. Clague received at least \$31,000 in commissions from Norstreet for securing investment capital.

10. In or around May 2007, Clague became the vice president of acquisitions for Norstreet.

1 11. On or about May 8, 2007, Nordstrom and Clague executed an Operating Agreement
2 for Norstreet Portfolio, LLC ("Operating Agreement").

3 12. The Operating Agreement included the following relevant terms or provisions:

4 a) "1.3. *Purpose*. The purpose and business of this Company shall be to raise
5 capital to fund real estate development. [...]. The Company may engage in other business or
6 acquire other assets only on the vote of the Managing Members;

7 b) 4.1.1.1. First, Profits shall be allocated proportionately among the Members
8 until the cumulative Profits allocated to each Member [...] equal the cumulative Priority Return
9 (22%) [...];

10 c) 4.1.1.2. Second, any profits greater than the Priority Return shall be
11 allocated to the Managing Members in accordance with their Percentage Interests;

12 d) 5.1.1. *Member-managed*. The Members agree that the management of the
13 Company shall be vested in the Managing Members, The Managing Members are Nathan
14 Nordstrom and Scott Clague. Nathan shall control [...51%...] and Scott Clague shall control
15 [...49%...] of the Company's authority. [...]. There shall be no further Managing Members;

16 e) 6.1. *Purpose*. The purpose of adding Members to the Company is to obtain
17 additional capital;

18 f) 6.4 *Management*. Members have no management authority;

19 g) 6.5 *Voting*. Members have no ownership in the Company;

20 h) 6.8 *Interest*. If any real estate venture obtains a profit, Members shall receive
21 interest at a rate up to, but not to exceed, twenty two (22) percent *per annum* of any capital
22 contribution; and

23 i) 10.4. *Amendment*. This Agreement may only be amended, restated, or
24 revoked by the written consent of the Managing Members."

25 13. After payments to investors, any profit still available would be split between
26 Nordstrom and Clague pursuant to the Operating Agreement terms.

1 14. Nordstrom offered and sold to an Arizona resident ("investor") a real estate
2 investment opportunity involving properties located in Hawaii ("Hawaii Project"). The residential
3 properties located in Hawaii would be rehabilitated, renovated, and resold.

4 15. Nordstrom also provided investors with information about re-platting one of the
5 Hawaii properties so that Norstreet could build and resell an additional residential structure or
6 condominium.

7 16. In addition, Nordstrom offered an investor a real estate investment opportunity
8 involving a residential property located in Washington D.C. ("D.C. Project"). The D.C. Project
9 property would be re-platted and reconstructed into three residential properties or condominiums
10 and then resold by Norstreet.

11 17. Clague also offered and sold the Hawaii Project and the D.C. Project investment
12 opportunities to certain Arizona investors.

13 18. Between May 2007, and August 2007, certain investors were told that the Hawaii
14 Project and/or the D.C. Project were close to completion and/or that completion would occur
15 within three months.

16 19. Clague stated to investors that their monies would be used for construction and
17 renovation costs required to complete the projects. Upon completion, the Respondents would sell
18 the properties at a profit to repay the investors' principal and interest.

19 20. Clague told investors that a rate of return of twenty-two percent (22%) could be
20 obtained from the investments.

21 21. Clague provided investors with projected financials for the Hawaii Project and the
22 D.C. Project, which showed projected rates of return of twenty-two percent (22%) or greater.

23 22. Clague told at least one investor that Norstreet had acquired the Hawaii properties
24 from the property owners through foreclosure bailouts.

1 23. Clague told at least one investor that the investor's money would be used solely to
2 rehabilitate, renovate, or construct the residential properties located in Hawaii and/or Washington
3 D.C.

4 24. Clague told investors that their investments would be secured by real estate of the
5 project property; however, Norstreet did not have title, free and clear, on the D.C. Project property
6 or the Hawaii Project properties to secure the investors' investments. In addition, Norstreet did not
7 execute a deed of trust, for the benefit of investors or Norstreet, on the project properties.

8 25. Clague stated to the investors that upon completion of one or more projects,
9 Respondents would create additional investment opportunities by purchasing, rehabilitating, and
10 reselling more real estate properties. Investors could choose to withdraw their principal and profits
11 or roll them over into a new real estate investment opportunity created by Respondents.

12 26. At least six Arizona residents invested after a meeting and/or discussion with
13 Nordstrom or Clague.

14 27. Between the periods of May 14, 2007, to July 1, 2008, at least six investors
15 executed a document titled, Amendment to Operating Agreement of Norstreet Portfolio, LLC
16 ("Amendment"). The Amendment was also signed by Nordstrom and Clague, as managing
17 members.

18 28. The Amendment stated that the investor would become a member of Norstreet on
19 the effective date listed in the document. The investor's membership interest would be based on the
20 amount of investment.

21 29. The Amendment also evidenced each investor's investment amount by specifying
22 the amount of money provided to Norstreet.

23 30. The Amendment stated that an investor could earn up to twenty-two percent (22%)
24 per annum.

25 31. Though each investor was made a member of Norstreet, the Amendment stated that
26 the investor had no management authority, no voting power, and no ownership in Norstreet. The

1 investor did not have any day-to-day or operational control over the Hawaii Project or the D.C.
2 Project.

3 32. Clague made trips to Hawaii and Washington, respectively, during development of
4 the projects.

5 33. Clague was in charge of the day-to-day operations, such as choosing and overseeing
6 the construction contractor, choosing the manner and method of rehabilitation or renovation, and
7 overseeing the sales of the properties. Clague met with several builders, interviewed the builders,
8 obtained cost breakdowns, met with architects, and met with an attorney to start the condominium
9 property regime ("CPR") process.

10 34. In addition, Clague determined which project to allocate the investor monies to,
11 what costs to incur, and the order of development.

12 35. Clague chose to re-plat one of the Hawaii properties and construct an additional
13 residential structure. In general, a CPR and a public report filed with the state of Hawaii are
14 required to offer for sale such a re-plat and residential structure addition.

15 36. Clague failed to disclose that the Hawaii Project was not ready for resale as a
16 project within the three-month time frame discussed because Respondents had failed to obtain all
17 required approvals from the state of Hawaii. In fact, the state of Hawaii CPR application for the
18 project did not get filed until on or about April 16, 2008, and a final public report did not become
19 effective until November 18, 2009.

20 37. Pursuant to Hawaii Revised Statutes, chapter 514A-31(a), "[n]o offer of sale or sale
21 shall be made until the project has been registered with the commission and the commission has
22 issued an effective date for the project's preliminary, contingent final, or final public report."

23 38. Clague failed to disclose to the investors that some of the investors' monies were
24 used for purposes other than for rehabilitation, renovations and construction. Respondents
25 submitted payments to the mortgagors of the properties to allow the mortgagors to make mortgage
26

1 interest payments that were still due and outstanding on the properties. In addition, investor monies
2 were used by Nordstrom to make multiple loans to the Hawaii mortgagor.

3 39. To date, neither the Hawaii Project nor the D.C. Project has been sold by Norstreet.

4 40. At all times relevant, Clague was not registered as a salesman or dealer.

5 41. Respondents raised \$1,076,000 from six investors.

6 42. Clague is a person controlling Norstreet, within the meaning of A.R.S. § 44-1999,
7 so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Norstreet, for
8 violations of the Securities Act.

9 II.

10 CONCLUSIONS OF LAW

11 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
12 Arizona Constitution and the Securities Act.

13 2. Respondent Clague offered or sold securities within or from Arizona, within the
14 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

15 3. Respondent Clague violated A.R.S. § 44-1841 by offering or selling securities that
16 were neither registered nor exempt from registration.

17 4. Respondent Clague violated A.R.S. § 44-1842 by offering or selling securities
18 while neither registered as a dealer or salesman nor exempt from registration.

19 5. Respondent Clague violated A.R.S. § 44-1991(A)(2) by making an untrue statement
20 or omitting to state a material fact necessary in order to make the statement made, in light of the
21 circumstances under which they were made, not misleading. The conduct includes, but is not limited
22 to, the following:

23 a) Clague told investors that their investments would be secured by real estate
24 of the project property; however, Norstreet did not have title, free and clear, on the D.C. Project
25 property or the Hawaii Project properties to secure the investors' investments. In addition,
26

b) Clague failed to disclose that the Hawaii Project was not ready for resale as a project within the three-month time frame discussed because Respondents had failed to obtain all required approvals from the state of Hawaii. In fact, the state of Hawaii CPR application for the project did not get filed until on or about April 16, 2008, and a final public report did not become effective until November 18, 2009.

c) Clague failed to disclose to the investors that some of the investors' monies were used for purposes other than for rehabilitation, renovations and construction. Respondents submitted payments to the mortgagors of the properties to allow the mortgagors to make mortgage interest payments that were still due and outstanding on the properties.

6. Clague is a person controlling Norstreet within the meaning of A.R.S. § 44-1999. Therefore, Clague is jointly and severally liable to the same extent as Norstreet for violations of A.R.S. § 44-1991.

7. Respondent Clague's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

8. Respondent Clague's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent Clague,
2 individually, shall jointly and severally with Nordstrom, Norstreet, and the marital community of
3 Nordstrom and Lorrie Beckham under Docket No. S-20759A-10-0387, pay restitution to the
4 Commission in the principal amount of \$1,076,000. Payment is due in full on the date of this
5 Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account
6 controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of
7 10 percent per annum from the date of purchase until paid in full. Interest in the amount of
8 \$349,593.42 has accrued from the date of purchase to February 17, 2011.

9 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
10 records of the Commission. Any restitution funds that the Commission cannot disburse because an
11 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
12 investor because the investor is deceased and the Commission cannot reasonably identify and
13 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
14 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
15 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
16 shall be transferred to the general fund of the state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent Clague,
18 individually, shall pay an administrative penalty in the amount of \$50,000. Payment is due in full
19 on the date of this Order. Payment shall be made to the "State of Arizona." Any amount
20 outstanding shall accrue interest as allowed by law.

21 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
22 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
23 shall be applied to the penalty obligation.

24 IT IS FURTHER ORDERED that Respondent Spouse Karen Stensler (f/k/a Karen Clague)
25 is dismissed from this action with prejudice.

26 IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(PTH)

SERVICE LIST FOR:

ORDER TO CEASE AND DESIST, FOR RESTITUTION,
AND FOR ADMINISTRATIVE PENALTY
RE: WAYNE SCOTT CLAGUE

ORDER TO DISMISS
RE: KAREN STENSLER (f/k/a KAREN CLAGUE)

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